IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

 SPECIAL CIVIL APPLICATION NO. 5497 OF 1997.

For Approval and Signature:

Hon'ble MR.JUSTICE M.S. SHAH Sd/-
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1.   Whether Reporters of Local Papers may be allowed
        to see the judgements?   No

2.   To be referred to the Reporter or not? No

3.   Whether Their Lordships wish to see the fair copy
        of the judgement?   No

4.   Whether this case involves a substantial question
        of law as to the interpretation of the Constitution
        of India, 1950 of any Order made thereunder? No

5.   Whether it is to be circulated to the Civil Judge?
                                                        No

Appearance:
     MR SV RAJU for the petitioner.
     MR MC BHATT for respondent nos. 1 and 2
     Govt. Pleader for respondent no. 3

CORAM : MR.JUSTICE M.S. SHAH
Date of decision: 14/10/97

  C.A.V. JUDGEMENT

  This petition is filed by a student who has
 passed the Higher Secondary Certificate Examination in
 the Science stream conducted by respondent no. 1 Gujarat
 Secondary Education Board (herein after referred to "the
 respondent - Board" or "the Board"). The petitioner has
 prayed that the respondent - Board be directed to produce
 the answer books of Mathematics-I and Mathematics-II
 papers on the aforesaid examination conducted by the
 respondent - Board in March, 1997 and for a direction to
 the Board to modify the marks allotted to the petitioner
 in the aforesaid two answer books and further to direct
 the respondent - Board to issue modified mark sheet to
 the petitioner for the aforesaid examination. After the

petition was filed on July 28, 1997, the petitioner also prayed for a direction against respondent no. 3 i.e. the Centralised Admission Committee for admissions to Medical/Dental and other colleges to give admission to the petitioner in the appropriate faculty including First M.B.B.S. Course on the basis of the revised marks.

2. The petitioner is a minor and the petition is filed through his father and natural guardian. The petitioner appeared at the Higher Secondary Certificate Examination (Science stream) conducted by the respondent - Board in March, 1997, the results whereof were declared in May, 1997. The petitioner was declared to have passed with distinction. In the present petition, we are concerned with the marks obtained by the petitioner in the Science theory papers and Mathematics. The petitioner obtained 123 marks out of 150 in Maths (Part I & II), 93 marks out of 100 in Chemistry, 95 marks out of 100 in Physics and 90 marks out of 100 in Biology. Thus, as per the result declared in May, 1997, the petitioner was declared to have obtained 401 marks out of 450 in the theory papers in Science subjects and in Mathematics. After the declaration of results, students are permitted to apply for verification of marks and accordingly, the petitioner applied for verification of marks in two Mathematics papers. As per the answer given by the respondent - Board on June 10, 1997 (Annexure "B" to the petition), there was no change in the marks as mentioned in the petitioner's mark sheet i.e. 123 out of 150 marks. The break up of marks in two papers was shown as 56 (out of 75 marks) in Mathematics-I and 67 (out of 75 marks) in Mathematics - II. The respondent- Board also permitted the petitioner to apply for personal inspection on payment of fee of Rs. 200/- and the petitioner was granted such inspection in presence of his friend on July 21, 1997. The intimation given to the petitioner for the aforesaid inspection is produced at Annexure "C" to the petition. After the said inspection, the respondent Board issued letter dated July 21, 1997 (Annexure "F" to the petition) to the effect that instead of aggregate 123 marks in Mathematics Part I and II, the petitioner was awarded 124 marks. Thus, the petitioner is awarded 402 marks out 450 in the Science theory papers and Mathematics.

3. In the memo of the petition, the petitioner has given the particulars of various questions in Maths I & II in response to which the petitioner had given correct answers, but in which the petitioner is given zero mark or less marks than the full marks allotted to the questions. At the hearing of the petition, learned

counsel for the petitioner submitted that although the examiners in the concerned papers had acted arbitrarily in giving the petitioner zero mark or less marks for answer to a number of questions, in order to save time of the Court and to concentrate more effectively on the controversy, the petitioner was referring to only three questions, two from Maths I and one from Maths II. It was further submitted that another reason for restricting his arguments to only three questions was that admissions to the First M.B.B.S. Course have stopped at 402 out of 450 marks in the Science theory papers and Mathematics and that the petitioner had already secured 402 marks out of 450 marks even before filing of the present petition, but there were about 8 students who had secured the same number of marks, but were shown above the petitioner in the merit list as in case of equal number of marks in Science theory and Mathematics papers at the Higher Secondary Certificate Examination, the marks in the practicals are considered and in case of tie even there, marks in the 10th standard examination are considered. Hence, it has been submitted that the petitioner would not be required to satisfy the Court in respect of all the questions about which he has made grievance in the petition and that even if the petitioner is declared to have obtained even one more mark in Maths I or Maths II, with 403 marks he would secure admission to First M.B.B.S. course. During the course of final hearing of the petition, one seat in First M.B.B.S. course was ordered to be kept vacant. According to the petitioner, the students with 403 marks out of 450 marks in Science theory papers and Mathematics have already secured admission to First M.B.B.S. course; and even student with 402 marks at merit no. 663 has secured admission to First M.B.B.S. Course. The petitioner is at Sr. No. 672 of the merit list.

4. Before proceeding to narrate the contentions of Mr Raju for the petitioner on merits, it is necessary to refer to the preliminary contention raised by Mr M.C. Bhatt, learned counsel for the respondent - Board that a Division Bench of this Court has already held in the case of Rajendra R. Dave vs. Gujarat Secondary Education Board & Anr., 1980 (2) GLR 318, and the same Bench has reiterated in the case of Kum. Priti M. Dalal vs. Gujarat Secondary Education Board & Anr., 1980 (2) GLR 296, that a Court of law should not stretch its long arms to interfere with the working of autonomous bodies operating in specialised fields like academic field, unless the petitioner makes out a case of mala fides or a malpractice against anyone and a student has no right to get his answer books reassessed. Strong reliance is

placed on the following observations :-

"We are of the opinion that in the working of
autonomous bodies operating in specialised
fields, the High Court at Bombay has gone too
far. We think that a Court of law should not
stretch its long arms to interfere with the
working of such autonomous bodies unless the
petitioner makes out a case of mala fides or a
malpractice against anyone or more of them. We
would like to set limit to our jurisdiction in
such cases and confine it to a mala fide action
or a malpractice affecting a student. To extend
our jurisdiction beyond it is to take an
impractical and inexpedient view. It is
difficult to assume an honest mistake as the High
Court at Bombay has done and to proceed to build
thereon the structure or edifice of our
constitutional jurisdiction. If we fall a prey
to the temptation of extending our jurisdiction
for too wide without setting well defined limits
to it, we shall be facing a very sad day, nay, we
have started facing it. If our of a lakh of
students who annually appear at the Higher
Secondary examination only five thousand apply
for reassessment and approach this Court, on
refusal to grant reassessment, without a solemnly
affirmed statement that he believes that
assessment of his answer books to be an
under-assessment, shall we transform ourselves
into examiners or shall we appoint an army of
fresh examiners for reassessing the allegedly
under-valued answer books ? If this flood gate
is opened, shall we be able to withstand the
gushing waters or shall the judiciary be
irretrievably sub-merged and buried by them in a
watery grave ? It is necessary to remember that
we do not have an annual fair of only one
examination. More than a dozen such examinations
are held every year by each of such Boards and
each more than one hundred Universities in the
country and at such examinations not less than a
million students appear every years. Rights
thrive in a democracy as they ought to but
mushrooms must be sternly weeded out. Judiciary
which is otherwise under a very heavy strain must
discipline itself unless the last ray of hope
which a common man has in this country is driven
to be extinguished."

5. Mr Bhatt has also submitted that the decision of the Bombay High Court referred to in the aforesaid judgment was taken in appeal and the Hon'ble Supreme Court reversed the Bombay view in the case of Maharashtra State Board of Secondary and Higher Secondary Education vs. Paritosh Bhupesh, AIR 1984 SC 1543. It is, therefore, strenuously urged that this Court should not entertain the petition and should not go into the merits of the controversy sought to the raised by the petitioner.

6. On the other hand, Mr S.V. Raju, learned counsel for the petitioner submitted that a Bench of three learned Judges of the Hon'ble Supreme Court in the case of Kanpur University v. Samir Gupta, AIR 1983 SC 1230 and other benches of the Apex Court in the case of Abhijit Sen v. State of U.P., AIR 1984 SC 1402 and in the case of State of Orissa vs. Prajnaparamita Samanta, (1996) 7 SCC 106 and two learned Single Judges of this Court have taken the view that the Court exercising powers under Article 226 of the Constitution can and should interfere where the concerned examining body is found to have committed obvious mistake/s. It is submitted that the Division Bench in the aforesaid two cases was dealing with the contention of a student who, according to the student, was supposed to have answered the questions correctly but his examiners had under-valued his papers in Maths and Biology and that this Court rightly refused to entertain the petition because a student cannot be allowed to be his own examiner. But in the instant case, the petitioner is not relying on his self-assessment but is relying on the following five features for distinguishing the present case from the cases before the Division Bench :-

(i) The petitioner has not come out with vague allegations nor is the petitioner shooting in the dark because the petitioner has come out with a specific case about the specific questions in two papers. In the case before the Division Bench, the student had stated that his answer books in Mathematics Papers I and II and Biology (theory) were under-valued. The petitioner in that case had, therefore, come out with vague allegations which is not the case here.

(ii) At the time when the division bench rendered the aforesaid decision, the students were not allowed even to have personal inspection of the answer books, but now the Board itself has taken one

step forward in the direction of transparency. Even the Supreme Court has observed in the case of Kanpur University v. Samir Gupta, AIR 1983 SC 1230 that transparency is to be encouraged, otherwise the students would have to suffer injustice in silence.

(iii) In the instant case, the petitioner has pointed out that there was an obvious error in the key supplied by the paper setter to the examiners for Maths I. In the two cases before the Supreme Court, it has been accepted as a settled legal position that "if the key answer is shown to be demonstrably wrong, that is to say, such as no reasonable body of men well versed in the particular subject would regard it as correct and if the answer given by a student is correct if regard be had to be acknowledged text-books or books which the student was expected to read and consult before appearing for the test it would be unfair to penalize the student for not giving an answer which accords with the `key-answer' that is to say with an answer which is demonstrated to be wrong."

(iv) In the instant case, the petitioner is not relying on self-assessment, unlike the case before the Division Bench. Here, the petitioner has filed affidavits of experts, who have stated on oath that the petitioner's answer is correct and that the petitioner should have been given full marks for the answers to the particular questions.

(v) The petitioner has also produced relevant extracts from the acknowledged text-books by eminent authors and the books which the students appearing at the Higher Secondary Certificate Examination in Science Stream were expected to read and consult. The Division Bench was not concerned with any such situation where the answer given by the student was found to be demonstrably right and the assessment made by the examiner was found to be demonstrably wrong.

Mr. Raju has also relied on the judgment of this High Court (Coram : Mr. Justice Rajesh Balia) delivered in Special Civil Application No. 5177 of 1996 on 6.9.1996.

7. Mr Raju has further submitted that if the student has answered the question 2 + 2 = ? as 4 and if the examiner has assessed it as wrong and has given zero mark, the Court has power and duty to interfere with such assessment without being deterred by the apprehension that in that event, there will be a flood gate of petitions. He submitted that if the examiners assess the answers in such a manner, let there be a flood gate of petitions because the Supreme Court has also observed in the case of Kanpur University vs. Samir Gupta (Supra) that if the University had not published the key answers alongwith the the result of the test, no controversy would have arisen in that case. But that is not a correct way of looking at these maters which involve the future of hundreds of students who are aspirants for admission to professional courses. If the key answer were kept secret in this case, the remedy would have been worse than the disease because, so many students would have had to suffer the injustice in silence. The publication of the key answer had unravelled an unhappy state of affairs to which the University and the State Government must find a solution. Their sense of fairness in publishing the key answer has given them an opportunity to have a close look at the system of examinations which they conduct.

8. Mr Bhatt for the respondent - Board submitted that in the aforesaid cases the Supreme Court was concerned with objective type questions whereas in the instant case the questions were not objective type and the students were required to follow certain steps before giving the answer; the Supreme Court was concerned with the failure of the system which would affect all the students and that the Court was not concerned with the question of individual reassessment. Therefore, the ratio of the aforesaid decisions cannot have any relevance in the facts of the present case. Mr Bhatt further submitted that in any view of the matter, if the Court is inclined to hold that the Division Bench judgment is no longer good law in view of the aforesaid decisions of the Hon'ble Supreme Court, this Court should refer the matter to a Larger Bench.

 It is further submitted that the judgment of this Court delivered by Hon'ble Mr Justice Rajesh Balia in Special Civil Application No. 5177 of 1996 on 6.9.1996 was rendered without the judgement of the Division Bench having been brought to the notice of the Court and that, therefore, the conflict between the judgment of the said learned Single Judge with the judgment of the Division Bench was brought to the notice of another learned Single

Judge of this Court - Hon'ble Mr Justice R.K. Abichandani who observed that in that case, the learned Single Judge (Hon'ble Mr Justice Rajesh Balia) found that the examiner had not adhered to the established norms of marking answers of objective question, but that decision does not lay down any general proposition of law and cannot be read in a manner that would bring a conflict with the aforesaid two division bench judgments, which were not cited before the Hon'ble Mr Justice Rajesh Balia. It was further observed that that if at all any conflict is spelt out from any expression in the judgement of Hon'ble Mr Justice Rajesh Balia, this Court, as a Single Judge, being bound by the division bench judgments, would follow the ratio of the division bench judgments.

9. In my view, if a student comes out with a case that his answer book in a particular subject has been undervalued and prays for reassessment on the basis of any general self-assessment, the case would be covered by the two Division Bench judgments cited on behalf of the respondent - Board and the Court would certainly follow the principle enunciated therein, but if the student makes out a case on the basis of opinion of experts or on the basis of standard text-books or books of eminent authors in the concerned subject, that the answer given by the student to a particular question is demonstrably right and the assessment made by the examiner is demonstrably wrong, the principle laid down by the Hon'ble Supreme Court in the aforesaid three cases would apply and the Court can interfere. In this connection, it may be noted that in the case of State of Orissa vs. Prajnaparamita Samanta, (1996) 7 SCC 106, the Hon'ble Supreme Court has observed that while the Court has jurisdiction in such matters to refer the particular questions and answers to experts, an answer need not be referred to the expert if the answer is so obviously correct.

On the other hand, if there are two possible views - one in favour of the student and the other against him - the Court would not interfere. It cannot, therefore, be said that there is any conflict between the two judgments of the Division Bench and the judgment of the Hon'ble Supreme Court in the case of Maharashtra State Board of Secondary and Higher Secondary Education and of Hon'ble Mr Justice R.K. Abichandani on the one hand and the three judgments of the Hon'ble Supreme Court and the Judgment of Hon'ble Mr Justice Rajesh Balia on the other hand.

As regards Mr Bhatt's submission that in the three cases before the Hon'ble Supreme Court there was failure of the system and not the question of alleged injustice to an individual student, it is required to be noted that there was publication of the key answer alongwith declaration of results which enabled a large number of students to move the Court as a group and but for such publication, the students would have suffered in silence. That does not mean that when an individual student is in a position to point out the injustice in the matter of assessment of specified question/s, the Court should shut an eye to such injustice only on the ground that the injustice is in an individual case and, therefore, the injustice should be perpetrated. The case would be different where an individual student makes any general statement about under assessment of answer book in a particular subject as was the case before the Division Bench and also before Hon'ble Mr Justice R.K. Abichandani. Even the Division Bench has observed that "rights thrive in a democracy as they ought to but mushrooms must be sternly weeded out" and, therefore, the Court cannot refuse to undertake the exercise in a case like this merely because there may be a possibility of finding more mushrooms than rights.

10. On merits, Mr Raju submitted that there were many questions, the answers of which were not correctly assessed by the examiner but he would like to concentrate on the three questions in order to show that the answers given by the petitioner to these three questions were demonstrably right and the decision of the examiner/s to give zero mark or less marks is demonstrably wrong. In this connection, reliance is placed on the following observations made by the Hon'ble Supreme Court in the case of Kanpur University vs. Samir Gupta (Supra) :-

"We agree that the key answer should be assumed to be correct unless it is provided to be wrong and that it should not be held to be wrong by an inferential process of rationalisation. It must be clearly demonstrated to be wrong, that is to say, it must be such as no reasonable body of men well versed in the particular subject would regard as correct......... Those text books leave no room for doubt that the answer given by the students is correct and the key answer is incorrect."

Mr Raju, therefore, submitted that as per the affidavits filed by the experts and also as per the standard text-books prescribed for the students of Higher Secondary Certificate Examination (Science stream) and even published by the Gujarat State Text-Books Board and National Council of Educational Research and Training and also the text-books written by eminent authors like Shanti Narayan, Formerly Dean of Colleges, University of Delhi and Tata McGrow-Hill Publishing Company Ltd., the answers given by the petitioner were correct. Therefore, it is very much open to this Court to go into the question whether the examiner/s had acted arbitrarily in not giving any mark or in giving less mark to the petitioner for the particular answer than the full marks allotted to the particular question.

11. In Mathematics – I, major grievance is made about Question No. 4(B) of 2 marks and Question No. 5 (D) of 3 marks. In Mathematics – II, major grievance is made about Question No. 5(D) of 2 marks.

12. Coming to question no. 5(D) in Maths I, the question is as under :-

"Find the equation of plane through (1, 1, 1) and the line of intersection of planes x + 2y + 3z =4 and 4x + 3y + z + 1 = 0."

The petitioner's answer is as under :-

Suppose the equation of planes is

12.1 The contention of the respondent – Board is that the answer to the aforesaid question consisted of two stages. For the first stage 2 marks were allotted as per

the key and for the next stage one mark was allotted. According to the Board, the petitioner had not carried out the stage for which 2 marks were allotted and the petitioner had attempted only the second stage for which one mark was allotted and the petitioner has been given half mark for that answer which is for all practical purposes one mark.

Para 7 of the affidavit Mr Natvarlal on behalf of the respondent - Board reads as under :-

"As far as the question no. 5(D) is concerned, this question carries three marks. it is expected from the candidate that he has to answer the equation of the intersecting line which carried two marks out of three. The portion which is attempted by the candidate carries only one mark and the sign of lambda is not mentioned. Thus, the candidate has attempted only that portion of the question which carries only one mark and he has not perfectly mentioned the answer and therefore, there is proper justification to assign half mark to this answer and as per the norms of the Board, the half mark has been converted into one mark."

12.2 On the other hand, Mr Raju has submitted that the text-books for Class XII for Mathematics Part II published by National Council of Educational Research and Training has given the following question and the method which is the same method as adopted by the petitioner :-

Find the equation of the plane passing through the intersection of the planes

$x + y + z = 6$ and $2x + 3y + 4z + 5 = 0$

and point (1,1,1)

Solution

The plane

$x + y + z -6+ k(2x+3y+4z+5) = 0$ ..(10.34)

passes through the line of intersection of the given planes for all values of k. It will pass through (1,1,1) if

$-3 + 14k = 0$ i.e. $k = 3/14$

putting k = 3/14 in (10.34), we get

  20x+23y+26z-69 = 0

which is the required equation of the plane.

 Mr Raju submitted that the same method which is
adopted by the petitioner in his answer is prescribed in
the text-book on Mathematics authored by Prof.   Father
C.G.   Wallace and various other eminent authors who have
been professors of Mathematics in the eminent colleges
like St. Xavier Science College, C.U. Shah Science
College and Gujarat College. He also relied upon the
text-book on Analytical Solid Geometry authored by Shanti
Narayan, Formerly Dean of Colleges, University of Delhi
wherein also the same method is prescribed as per which
method the petitioner has answered the question. Mr.
Raju also relied upon the book on Mathematics published
by Tata Mcgraw Hill Publishing Company Ltd. which is
also authored by professors in the Mathematics Department
of the Gujarat University, Professor Darshansingh Bassan,
Mr Ajit P. Shah, Professor of M.G. Institute of Science
and Prof. Mr P.K. Vyas of M.D. Science College which
is also a text book for 12th standard.

 Mr Raju further submitted that the arbitrariness
in the assessment has come in because in the book on
Mathematics published by "Navneet", there are two methods
for solving the aforesaid question, but the Board has
adopted only the first method as the correct method for
the key answer and, therefore, the examiner has not taken
into account the second method prescribed in the same
book which is adopted by the petitioner for his answer.

12.3 Considering the various text-books, it   does
appear that as per the text books published by Tata
Mcgraw Hill Publishing Co. Ltd. and authored by Prof.
Darshansing Bassan, formerly professor in the Mathematics
Department of Gujarat University and professors in M.G.
Institute of Science and another professor and also the
text-book published by National Council of Educational
Research and Training, the method adopted by   the
petitioner is also one of the correct methods for solving
the question.   The   petitioner has also produced
affidavits of experts in the subject – the affidavits of
Mr Vijay G.   Vora,   M.Sc.,   M.Phil., B.Ed.   with
Mathematics, Mr N.G. Desai, retired professor and Head
of Department of Mathematics, M.G. Science Institute,
Mr. Babubhai G. Patel, Conductor for Higher Secondary

Board XII Examination in the year 1994 in support of his assertion that the answers given by the petitioner were correct for question no. 4(B) and question no. 5(D) in Mathematics Paper - I.

Mr Bhatt has raised serious objection against the affidavit of Mr. Vijay G. Vora on the ground that he is associated with private tuition classes and he cannot be considered to be an independent expert. However, no such objection is raised against other experts especially Prof. N.G. Desai, Retired Professor and Head of Department of Mathematics at the M.G. Science Institute or Mr Babubhai G. Patel.

13. As far as Question No. 4(B) in Mathematics - I is concerned, the question as translated in English reads as under :-

"4(B). If a vector r makes with X-axis and
        Y-axis angles of measures 45 and 60 respectively,
        find the measure of the angle which r makes with
        Z-axis."

The answer given by the petitioner is as under:-

We know that -

13.1 However, the examiner has given the petitioner zero mark out of 2 marks and in the affidavit-in-reply filed by Mr Natvarlal M. the expert in the paper of Mathematics - I it has been stated as under :-

"As far as question no. 4(B) is concerned, the
        candidate has not indicated the degree of
        respective angle. Thus, there is a mistake
        apparent in the first step attempted by the
        candidate. Mere numericals of 45 and 60 without
        mentioning degree does not indicate anything with
        reference to the question."

In the affidavit in reply filed by Mr Manuprasad

M. Jani, examiner in Mathematics Paper - I, he has
stated as under :-

"As per the key, one mark is to be given
for the following steps :

However, the candidate has written

Cos + Cos + Cos = 1.

Moreover, the student should have written 45
instead of 45 and 60 instead of 60.

The measurements of the angles are not mentioned
in radians. At the end of the answer also, the
candidate has not shown the measurements of the
angles in radians. Hence, the assessment is
proper."

13.2 There is some controversy about the key issued by
the paper setter. Admittedly, the original key reads as
under :-

The Board has submitted that 30 was an obvious mistake in
place of 60.

Mr. Raju has vehemently submitted that because
of the mistake in the key, the examiner has given the
petitioner zero mark. On behalf of the respondent Board,
it has been admitted that there was an apparent mistake
in the key, but it is stated in the affidavit dated
September 3, 1997 of Mr Natvarlal M. that before the
evaluation work commenced, the subject experts had
directed correction of key. That statement is
controverted by the affidavit of Mr. Vijay G. Vora,
M.Sc., M.Phil., B.Ed. who has stated that -

"I say that I had gone for the purpose of
        assessing the marks for Mathematics I examination
        answer papers at the Answer Assessing Centre at
        A.G. High School, Navrangpura, Ahmedabad on
        18.3.1997. I was given a Key in Mathematics I
        paper which contained number of mistakes, more
        particularly with respect of the answer to
        Question No. 4(B). I say that corrected or
        revised key was not given before the commencement
        of the evaluation and assessment of Mathematics I
        answer books and large number of answer books
        were assessed in my presence without there being
        any corrected key or revised key. It is
        incorrect to state that experts had indicated the
        correct key before the commencement of
        evaluation. I can depose because at one of the
        examination centres where papers were assessed
        i.e. at my centre no such correct key was
        indicated nor any person told the examiners about
        mistakes in the key - model answer. I,
        therefore, submit that large number of answer
        books were assessed and corrected on the basis of
        incorrect answer provided in the key.

    I reiterate that key model answer for
        Question No. 4(B) of the Mathematics Part I is
        totally wrong and no correction was made before
        starting of evaluation of the answer books."

The affidavit of Mr Vijay G. Vora is challenged
firstly on the ground that Mr Vijay G. Vora was not
appointed as an evaluator, but he was merely appointed to
verify the totalling of marks and secondly, Mr Vijay G.
Vora is not an independent expert, because he is
associated with private tuition classes. Moreover, no
attempt whatsoever has been made to show that the
students whose answer to question No. 4(B) did not tally
with the original key but tallied with corrected key were
not given zero mark, but were given full marks.

13.3 At the time of hearing of the petition, Mr Bhatt
submitted that apart from the grounds given in the
affidavits, the petitioner was not entitled to get any
mark for the aforesaid answer, because the petitioner had
not attempted the first step and had straight gone to the
second step and that one mark was assigned for the first
step as well as the second step, but since the first step
was not written, the petitioner was not entitled to any

mark for the second step.

 Mr Raju submitted that the aforesaid first step
was not required to be written because the value of Cos
45 and Cos 60 are matters of elementary knowledge for
students of Trigonometry. Students have been studying
this subject since 9th standard and the text-books of 9th
standard and 10th standard published by Gujarat State
Board of School Text-Books also contain relevant material
inter alia, as under :-

 "Since   we   frequently use   the   values of
        trigonometric ratios of acute angles 30 , 45 and
        60 , they are shown in the following table :-

Measure of Trigonometric ratio of	30	45	60	
sin				
cos				
tan				
cosec				
sec				
cot				

 Mr Raju's contention, therefore, is that these
values of trigonometric ratios of acute angels 30 , 45
and 60 are so well-known to the students appearing at the
12th Standard (HSC) Examination that they proceed on the

assumption that these elementary values are also known to the examiner/s and, therefore, they need not and do not mention the first step which is merely the well known premise and the next step would not have been correct if the student had not known the value of the aforesaid trigonometric ratios.

Mr Raju further submitted that the above argument urged on behalf of the respondent - Board at the hearing that the first step was not written by the petitioner is an after thought because the aforesaid contention was not taken in the affidavit-in-reply filed by Mr Natvarlal M. on September 3, 1997, who was one of the subject experts in Mathematics - I.

13.4 Moreover, the objection raised in the annexure to the affidavit of Mr. Manuprasad M. Jani on September 27, 1997 has also been subsequently raised - that the petitioner has not shown the answer without using the words "radian". Mr. Raju has thereupon relied on the relevant extract from the text-book Class XII of Mathematics Part I published by National Council of Educational Research and Training especially page 24 thereof which reads as under :-

"Radian measure of some common angles are given in the following table :

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    gckkkkkkkkkkkokkkokkkkokkkkkokkkkkokkkkkokkkkookkkm
    f Radians    f    f    f     f      f     f    f    f
    f            f    f    f     f      f     f    f    f
    f ----------f---f----f-----f------f-----f----f----f
    f            f    f    f     f      f     f    f    f
    f Degrees    f    f    f     f      f     f    f    f
    dkkkkkkkkkkkkklkkklkkkklkkkkklkkkkkklkkkkklkkkklkkkkj
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Note that when an angle is expressed in radians, the word "radians" is often omitted. Thus = 180 is really a short form of writing __ radians = 180 ."

Mr Raju submitted that the word "radians" is often omitted and this is also borne out from page nos. 146 and 157 of the text-book of Mathematics Part I prescribed by the Gujarat State School Text-books Board.

13.5 At the oral hearing, Mr Bhatt has raised a further contention that since the question was in

degrees, the answer should not have been given in radians. Mr Raju, therefore, relied on the aforesaid text-books on mathematics published by National Council of Educational Research and Training wherein the radian measurements of some common angles are given and there is no dispute about the fact that the ___ is 60 degree and that ____ is 120 degrees because 2 radians are 360 degrees and ___ is 180 degrees. It is also to be found on page 23 of the aforesaid text-book published by the National Council of Educational Research and Training which is reproduced in the previous sub-para.

It is submitted by Mr Raju that in the first affidavit the only objection raised is with reference to the numericals 45 and 60 without mentioning degrees. Mr Raju's contention is that since the question itself was in respect of 45 and 60 , the numericals 45 and 60 in the answer, any reasonable person would construe the numericals 45 and 60 in the answer as 45 and 60 and that in any case even a strict examiner may deduct half a mark for the omission of degree sign, but no reasonable person well versed in the subject of mathematics or trigonometry would give zero mark for the answer which is correct.

13.6. From the aforesaid discussion, it does appear that the assessment of answer to question no. 4(B) in so far as it gives zero mark to the petitioner is arbitrary as the answer given by the petitioner is demonstrated to be correct and that the only error, if it can be so called, is in not using the degree sign above 45 and 60. When the question is of only two marks, a liberal examiner may not deduct any mark, a strict examiner may deduct half a mark, but on the basis of the standard text-books produced and relied upon by the petitioner which are written/published by eminent authors/publishers, it must be held that the assessment made by the examiner on answer to question 4(B) in so far as zero mark is given is absolutely arbitrary.

14. When the aforesaid material was being considered, Mr Bhatt submitted that any view of the matter, the subject expert has stated in para 7 of the affidavit dated September 3, 1997 that in respect of other answers in Maths II, the examiner was liberal and, therefore, if the reassessment is to be done, it must be for the entire answer book. It was also submitted that even in University exams where reassessment is allowed under rules, margin of plus or minus 15% is permissible and, therefore, the Court should not interfere even if there

is any mistake in not giving 2 or 3 marks out of 75 marks.

I am afraid that such a stand is not permissible because the Court cannot give a direction for reassessment of the entire answer book in a subject on the basis of general statement of over assessment or under assessment. The Court is confining its directions to two questions in Maths I paper only. The statement regarding over assessment is for Maths II for which no direction is being given. On the basis of the material on record, the Court has no hesitation in coming the conclusion that the answers given by the petitioner to question nos. 5(D) and 4(B) in Maths I are demonstrably correct and in any case no examiner well versed in the subject would have given zero mark for answer to question No. 4(B) and only half a mark for answer to question no. 5(D). I have not gone into details of the answer to question 5(D) in Maths Paper II, because the assessment thereof cannot be said to be arbitrary, as the view taken by the examiner is a plausible one.

ORAL ORDER

15. The petition, therefore, succeeds. The respondents are directed to get, within one week from today, the revaluation of the petitioner's answers to questions Nos. 4(B) and 5(D) in Maths I in light of the observations made in this order and to issue revised mark sheet accordingly.

16. The process for admissions to First M.B.B.S. Course has already been completed. Of course, the process was over after filing of the petition on July 28, 1997 and some time elapsed as the Court which admitted the petition could not take it up for final hearing immediately and one seat has been kept vacant pursuant to the interim order of this Court.

17. During the course of pronouncement of this order, the Court has heard the learned counsel for the parties. According to the petitioner, the admission to the First M.B.B.S. Course has stopped at 402 marks, and the petitioner has already got 402 marks. It is submitted that in view of the observations made in this judgement, the petitioner is bound to get more marks than 402 marks upon revaluation as aforesaid. Therefore, respondent no. 3 be directed to grant admission to the petitioner in the First M.B.B.S. Course, on the seat ordered to be kept

vacant as per the interim order passed by this Court earlier. Mr. Raju has submitted that the Government is going to close admissions to the First M.B.B.S. course after October 15, 1997, and, therefore, tomorrow is the last date for securing admission to the said course, otherwise the petitioner will not get admission even after succeeding in the petition.

Mr Bhatt submits that the Board would like to carry the matter in appeal and, therefore, if the direction for immediate admission is granted, the appeal of the Board may become infructuous.

Having heard the learned counsel for the parties and in order to balance equities between the parties, it is directed that notwithstanding the direction, if any, for closing the admission to the First M.B.B.S. Course on October 15, 1997, respondent no. 3 shall consider On October 21, 1997 the case of the petitioner for admission to the First M.B.B.S. course on the basis that the petitioner would get more marks than 402 marks, on the seat kept vacant as per the interim order of this Court.

18. Rule made absolute to the aforesaid extent with no order as to costs.
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Note : Some mathematical symbols have been written by hand in the original judgment which is sent to the department. Hence, while issuing certified copy/writ, please refer to the original judgment and corrections be made accordingly.